given by the defence which is capable of making it out. But if there is anything to support it then the burden which in the first place lies upon the defence of making it out is sufficiently discharged if the jury are left with a sense of reasonable doubt as to the existence or non-existence of the provocation."

In our view therefore, having regard to the circumstances of the case, the proper thing to do would be to set aside the conviction of murder and order a retrial.

Conviction of murder set aside.
Retrial ordered.

Solilcitors: *Xavier & Thambiah.*

RE TANG PUI SIM DECD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) May 17, 1967]

[Singapore — Federal Court Civil Appeal No. Y15 of 1967]

Probate and Administration — Grants made to next of kin and strangers — Application by next of kin to revoke grant made to strangers — Burden of proof — Locus standi of strangers — Grant made per incuriam — Probate and Administration Ordinance (Cap. 17), s. 18(3)(d).

The deceased died intestate on the 12th August 1964 and both the appellants and the respondents petitioned for letters of administration. The appellants maintained that they were the lawful cousins and next of kin of the deceased. It was not in dispute that the respondents had no beneficial interest in the estate of the decased and were not the lawful next of kin but their petition for letters of administration was however made under section 18(3)(d) of the Probate and Administration Ordinance (Cap. 17). Both petitions came up before the registrar for hearing on the same day and both petitions were granted. The appellants then applied by way of motion to have the grant made to the respondents revoked. At the hearing of the motion the court ordered that the motion proceed as an action and pleadings be filed. The appellants in their pleadings claimed a declaration that they were the lawful cousins and next of kin of the deceased and that the grant of letters of administration to the respondents be revoked. The respondents on the other hand maintained that the appellants were not the lawful cousins and next of kin of the deceased and they sought a declaration accordingly and claimed that the grant of letters of administration to the appellants be revoked.

At the trial the appellants withdrew their claim for a declaration that they were the lawful cousins and next of kin of the deceased on the ground that it was redundant and unnecessary. They maintained that as they had been accepted by the registrar on their sworn evidence as the lawful cousins and next of kin the respondents should have been called upon to discharge the onus of proving their interest and disproving the appellants' interest. The trial judge after hearing arguments on both sides revoked the grants made to the appellants and respondents. On appeal by the appellants (the respondents did not appeal against the revocation of their grant),

Held: (1) the grant of letters of administration to the respondents was made *per incuriam*. As the grant made to them had been revoked and as they were neither next of kin nor did they have any interest in the estate of the deceased the respondents were in the position of strangers to the estate and in consequence had no *locus standi* and could not be heard to revoke the appellants' grant which was properly made by the registrar;

(2) in the circumstances it would be pointless and indeed a waste of time and futile to prolong these proceedings by sending the appellants back for further hearing. The decision of the trial judge revoking the grant of letters of administration to the appellants should be set aside and the grant to them restored.

Case referred to:—

(1) *Dabbs* v. *Chisman* (1810), 161 E.R. 946.

FEDERAL COURT.

C. C. Tan (*T. P. B. Menon* with him) for the appellants/plaintiffs.

Kirpal Singh for the respondents/defendants.

Cur. Adv. Vult.

The judgment of the Federal Court was read by,

Buttrose J.: This is an appeal by the plaintiffs from a decision of Choor Singh J. in a probate action instituted to determine who has the right to administer the estate of one Tang Pui Sim who died intestate on the 12th August, 1964.

The facts which give rise to these proceedings are these:—

In Probate No. 691 of 1964 the 1st defendant petitioned for a grant of letters of administration of the estate of the deceased to her and her daughter, the 2nd defendant. It was not in dispute that the defendants had no beneficial interest in the estate of the deceased and were not the next-of-kin and their petition was made under section 18(3)(d) of the Probate and Administration Ordinance (Cap. 17). They maintained that the deceased did not leave her surviving any issue or next-of-kin.

In Probate No. 753 of 1964 the plaintiffs petitioned for a grant of letters of administration of the estate of the deceased to them. They maintained that they were the lawful cousins and next-of-kin of the deceased.

Curiously enough both petitions came up before the registrar for hearing on the same day and for some extraordinary reason both were granted. One can only surmise that the grant of letters of administration to the defendants was made *per incuriam.*

The plaintiffs then applied by motion to have the grant made to the defendants revoked.

Subsequently the court ordered that the motion proceed as an action and pleadings were filed.

The plaintiffs claimed a declaration that they were the lawful cousins and next-of-kin of the deceased and that the grant of letters of administration to the defendants be revoked.

The defendants on the other hand maintained that the plaintiffs were not the lawful cousins

and next-of-kin of the deceased and sought a declaration accordingly and claimed that the grant of letters of administration in favour of the plaintiffs be revoked.

At the trial the plaintiffs withdrew their claim for a declaration that they were the lawful cousins and next-of-kin of the deceased on the ground that it was redundant and unnecessary. The stand which they took was that they had been accepted by the registrar on their sworn evidence on affidavit as the lawful cousins and next-of-kin of the deceased and to whom in consequence a grant of letters of administration was regularly and properly made and it was for the defendants to attack it.

It was the contention of the plaintiffs that as the defendants had no interest in the estate and were not claiming to be the next-of-kin the grant was made to them *per incuriam* and should be revoked. In any event the plaintiffs asserted that the onus or burden was on the defendants to show that the grant to them should not be revoked on the principle that where letters of administration have been regularly obtained the person in possession of them is not bound to propound his interest till the party calling it in question has established his own interest, see *Dabbs* v. *Chisman,*[1] and that the defendants should have been called on to discharge the onus of proving their interest and disproving the plaintiffs' interest.

The trial judge failed to give any ruling on these questions and after hearing argument on both sides on these matters proceeded summarily to revoke both grants. No opportunity was given to the plaintiffs to be heard further on the matter or to call evidence or to propound their interest should it become necessary.

It is from this decision that the plaintiffs now appeal.

It is, perhaps, unfortunate that the trial judge failed to appreciate the position for this is what he said:—

"There were therefore two clear issues of fact to be decided: first, whether the plaintiffs were the next-of-kin of the deceased; and secondly, whether the deceased died leaving no next-of-kin and no creditors. It was to decide these questions of fact that the court ordered this matter to proceed as an action. And at the trial of the action, it was incumbent upon the parties to prove to the satisfaction of the court what they alleged in their pleadings. The plaintiffs had to prove that they were the lawful cousins and next-of-kin of the deceased as claimed in their statement of claim. As they called no evidence at the trial, they failed to do this and the grant of letters of administration made to them was therefore revoked. And the defendants by calling no evidence at the trial failed to prove that the deceased died leaving no next-of-kin and no creditors. Accordingly the grant of letters of administration made to them was also revoked."

The trial judge appears to have misinterpreted the submission made on behalf of the plaintiffs on the burden of proof as indicating that they were not calling any witnesses as this question would only arise after the trial judge had ruled as to which party should first undertake the discharge of the burden of proof. We were informed by counsel for the plaintiffs that he had in fact suppoenaed witnesses and proposed to call evidence.

On the hearing of the appeal counsel for the defendants again reiterated that they had no interest whatever in the estate of the deceased and were not concerned further in any way with the grant of letters of administration to them. They have lodged no appeal against the decision of the trial judge revoking their grant.

The position therefore is this. Now that their grant has been revoked and they are neither next-of-kin nor do they have any interest in the estate of the deceased the defendants are in the position of strangers to the estate and in consequence have no *locus standi* and cannot now be heard to revoke the plaintiffs' grant which in our view was regularly and properly made by the registrar.

In these circumstances it would, in our view, be pointless and indeed a waste of time and futile to prolong these proceedings by sending them back for further hearing.

The appeal must be allowed and there will be an order that the decision of the trial judge revoking the grant of letters of administration to the plaintiffs be set aside and the grant to them restored. The plaintiffs are entitled to their costs out of the estate but there will be no order as to costs in respect of the defendants.

Appeal allowed.

Solicitors: *Oehlers & Choa; Mallal & Namazie.*

WONG KUE v. PUBLIC PROSECUTOR

[A.Cr.J. (Pawan Ahmad J.) May 31, 1967]

[Seremban — Criminal Appeal No. 30 of 1966]

Criminal Law and Procedure — Witness — Interview — Reasonable time.

The defence has every right to interview police witnesses offered to the defence and the defence should be given a reasonable time for this purpose. A period of 15 minutes to interview six witnesses as in this case, is certainly not reasonable especially when a request for more time was made at the end of the period. Failure to give a reasonable time for the defence to interview these witnesses amounts to a gross injustice.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. for the appellant.

Abu Talib bin Othman (Deputy Public Prosecutor) for the respondent.

Pawan Ahmad J.: The appellant was charged in the magistrates' court, Seremban for committing an offence under section 4(1)(c) of